

REMARKS

Please note that the fact that August 30, 2008 fell on a Saturday, and that the Patent Office was closed Sunday, August 31 and Monday, September 1 (Holiday), ensures that this paper is timely filed on Tuesday, September 2, 2008.

In the Office Action dated July 22, 2008, pending Claims 1-21 were rejected under 35 U.S.C. § 101. Of these claims, Claims 1, 11, and 21 are independent claims; the remaining claims are dependent claims. No other rejections were made. The Office is respectfully requested to reconsider the rejections and objections presented in the outstanding Office Action in light of the foregoing amendments and the following remarks.

It should be noted that Applicant is not conceding in this application the claims amended herein are not patentable, as the present claim amendments are only for facilitating expeditious prosecution. Applicant respectfully reserves the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Applicant specifically states no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Rejection of Claims 1-21 under Section 101

All claims stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Reconsideration and withdrawal of this rejection is respectfully requested.

Applicant respectfully disagrees with the rejection of the claims under Section 101 but has nonetheless amended the independent claims to further emphasize that they are directed to statutory subject matter.

For example, independent claim 1 has been amended to recite, *inter alia*,

An apparatus for allowing a user to model at least one *variation* of a software artifact by using extension types *comprising: one or more processors; a memory accessible by the one or more processors; instructions contained in the memory and executable by the one or more processors for allowing a user to obtain a controllable software artifact, said instructions comprising: instructions for providing a user with a software artifact; and instructions for allowing the user to add features to the software artifact; wherein the features comprise extension types, each extension type comprising an ordered tuple of a plurality of element types, each of the element types corresponding to different class hierarchies; and wherein said extension types are utilized to implement data classifications.*

Claim 1 (emphasis added). The remaining independent claims (11 and 21) have been similarly amended.

These amendments are intended to clarify that a user can employ variational modeling of software artifacts to improve data classification by utilizing the instantly claimed invention, thereby achieving a “real world” result. Support for these amendments can be found throughout the specification (note that citations to the specification indicate citations to the original specification’s page and line numbers). Particularly, the specification makes clear that “a need has been recognized in connection with providing a user with an infinitely malleable software artifact having no fixed structure controls of its own. To this software artifact additional features or control points can then be added to obtain concrete and controllable software artifacts.”

Specification, pp. 2, lines 10-13. Within the specification “several applications of extension types are given in the context of aspect-oriented software development and design patterns.” *Id* at pp.8, lines 6-7. Furthermore, the specification makes clear that “the present invention...may be implemented on at least one general-purpose computer running suitable software programs.” *Id* at pp. 41, lines 1-4.

Therefore, Applicants respectfully submit that it is well known by those with ordinary skill in the art that such software artifact modeling is useful and has practical application, i.e., has a concrete and tangible “real world” result. Specifically, “[e]xtension types is a simple way to implement multiple and dynamic classifications.” *Specification*, pp. 40, lines 16-17. Such extension types are useful, *inter alia*, for running simulations in software, which are dependent upon an underlying model. Numerous examples of practical applications are given throughout the specification as well. Therefore, the claimed invention is directed to statutory subject matter.

Additionally, claim 21 now recites, *inter alia*, “[a] program storage device readable by machine, *tangibly encoded with a program of instructions executable by a processor of the machine ...*” This language is intended to clarify that the program storage device is functional and statutory (as per Office Action, pp. 7 (noting that “*a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program’s functionality to be realized, and is thus statutory*”).

In light of the amendments to the claims, Applicants respectfully request reconsideration and withdrawal of these rejections. Should the Examiner not withdraw the Section 101 rejection, Applicants respectfully request the Examiner to suggest how the rejection may be overcome to avoid unnecessary delays in prosecution. As stated in Section 2106 II of the MPEP,

[w]henver practicable, *USPTO personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

To that end, should the Examiner, upon re-evaluation of the current rejection in light of the foregoing Remarks, deem that a rejection of the claims is still proper; Applicant and his undersigned representative kindly request the courtesy of a Telephone Interview so that an agreement on an Examiner's Amendment may be reached as to how the claims might be amended in order to satisfy Section 101.

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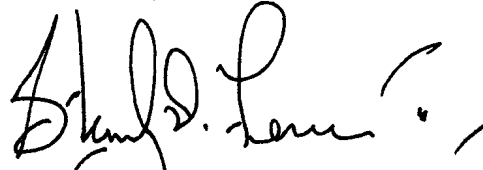
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Conclusion

In summary, it is respectfully submitted that the instant application, including Claims 1-21, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley D. Ference III", written over a horizontal line.

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